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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,580	02/02/2001	John V. Marlow	T8465812US	6252

7590

05/18/2004

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CANADA

EXAMINER

ASHLEY, BOYER DOLINGER

ART UNIT	PAPER NUMBER
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3724

14

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/773,580

Applicant(s)

MARLOW ET AL.

Examiner

Boyer D. Ashley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This office action is in response to applicant's amendment filed 3/5/04, wherein claim 1 was amended. Claims 1 and 3-8 are pending in the instant application with claim 7 remaining withdrawn from consideration.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-6 and 8 rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art, hereinafter AAPA, in view of Roberts et al., U.S. Patent 3,856,135, and Chen et al., U.S. Patent application 2002/0124388, as set forth in paragraph 4 of paper number 12, and includes freshly created battery plates.

Response to Arguments

4. Applicant's arguments filed 3/5/04 have been fully considered but they are not persuasive.

Applicant contends that it took many years of research to develop a process for cutting continuous pasted metal mesh strip, which could be accomplished without the presence of paper barriers; yet, the only language in process claim 1 is to heat a blade to cut the pasted metal mesh strip. What is so special about the process of claim 1?

Applicant contends that Roberts et al. did not have a problem with paste sticking to the cutting wires 43 and does not discuss heating blades to prevent sticking.

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However, it should be noted that Roberts et al. is not being relied upon to teach that it is old and well known in the art to heat blades to prevent sticking with paste but rather that it is old and well known to heat metal elements that come in contact with paste to prevent sticking to the paste. One of ordinary skill in the art readily recognizes the need to prevent paste from sticking to the cutting blades. The teachings of Roberts et al. would suggest to one of ordinary skill in the art to try heat blades with paste because Roberts et al. discloses that heat elements in contact with paste prevents sticking. One of ordinary skill in the art would be reasonably apprized to try heat blades to prevent the paste from sticking to the blades.

As to the specific temperature ranges for the heated blades, it should be noted that Roberts et al. is not being relied upon to disclose the specific temperature ranges for heating the blades only, as explained above, to suggest that heating elements in contact with paste can prevent sticking. The specific temperatures are merely experimental.

Applicant contends that Chen et al. does not add anything to the rejection because it discloses a different method for cutting and handling the paperless battery plates. However, it should be noted that Chen et al. is only being used to disclose the need/desire in the art to have paperless battery plates. The specifics of Chen et al.'s method and handling are irrelevant because they are not being relied upon. Moreover, nothing in the claim 1 of the instant applicant prevents any other method or handling. The only process of claim 1 is that the blades are heated to cut paperless batteries.

Applicant's comments regarding long felt need, it should be noted that these comments do not show that others of ordinary skill in the art were working on the problem nor is there any evidence that if persons skilled in the art would be unable to solve the problem having known of the teachings in the above cited references. Moreover, the arguments of counsel cannot take the place of evidence in the record. See MPEP 2145.

5. For the reasons above, the grounds of rejection are deemed proper.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 703-308-1845. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Boyer D. Ashley
Primary Examiner
Art Unit 3724

BDA
May 16, 2004